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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/656,948 | 09/08/2003 | Kailash C. Vasudeva | PAT 51403A-2 | 9002 |

26123 7590 12/16/2009

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| EXAMINER | |
|---|---|
| WILLIAMS, ROBERT H. | |
| **ART UNIT** | **PAPER NUMBER** |
| 3679 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 12/16/2009 | ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipinfo@blgcanada.com

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/656,948 | VASUDEVA, KAILASH C. | |
| | Examiner | Art Unit | |
| | Robert Williams | 3679 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *22 September 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *4-22,28-31 and 91-104* is/are pending in the application.

4a) Of the above claim(s) *4-22,28-31 and 97-102* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *91-96, 103, 104* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 September 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *9/22/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/22/09 has been entered.

### *Election/Restrictions*

2. Claims 4-22, 28-31, and 97-102 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/25/09.

3. This application contains claims 4-22, 28-31, and 97-102 drawn to an invention nonelected with traverse in the reply filed on 4/25/09. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP

§ 821.01. Applicant should note that claims 4, 5, 30, and 31 depend from cancelled claim 1.

## *Specification*

4. The abstract of the disclosure is objected to because it contains the following phrase which can be implied: "The present invention is directed at." Correction is required. See MPEP § 608.01(b).

## *Claim Rejections - 35 USC § 103*

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 91, 92, 94-96, 103 and 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,801,083, Glauser et al., hereafter, "Glauser '083," in view of U.S. Patent 4,792,162, hereafter, "Medvick '162."

7. The limitation in claim 91, "a first portion and a second portion secured together prior to contact with a corresponding flange," has not been given patentable weight because it is a product-by-process limitation. Therefore, determination of patentability is based on the product itself, and does not depend on the method of production.

Further, the process step recited does not imply any particular structure or impart distinctive structural characteristics to the final product. See MPEP 2113.

8. Regarding claim 91, Glauser '083 discloses the claimed invention as follows:

- The claimed two-part exhaust flange having a first portion (column 2, line 45-46, "inner threaded surface," Fig. 3 #22) and a second portion (column 2, line 50, "flat ring seal holder," Fig. 3 #25) secured together, as shown in Fig. 3&4;
- The claimed complementary exhaust flange (column 2, line 43, "outer threaded surface," Fig. 3 #20);
- The claimed first and second exhaust pipes (Fig. 3 #16, 17); and
- The claimed exhaust flange extending radially outwardly from a central opening for said first exhaust pipe, as shown in Fig. 3&4;

9. However, Glauser '083 does not disclose the claimed at least one of said first or second portion is manufactured of sintered powdered metal.

10. Nevertheless, Medvick '162 teaches that it is known to use sintered powdered metal in the relevant art.

11. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to produce the flange of Glauser '083

out of sintered powdered metal as taught by Medvick '162 because such modification "offers significantly reduced manufacturing costs while providing a durable structure." Medvick '162, column 7, line 29-31.

12. Regarding claims 92 and 94, the combination of Glauser '083 and Medvick '162, as applied to claim 91 above, further discloses the claimed element shaped to receive an annular sealing gasket (claim 92), where said element is a recess in the exhaust flange (claim 94) (Glauser '083, column 2, line 52, "annular groove in which an o-ring is disposed," Fig. 3 #28, 32).

13. Regarding claim 95, the combination of Glauser '083 and Medvick '162, as applied to claim 91 above, further discloses the claimed invention as follows:

- The claimed one of said first and second portions has a cylindrical recess in one face thereof, coaxial with said central opening (Glauser '083, column 2, line 46-47, "recessed vertical bearing surface," Fig. 4 #23, where said surface forms the bottom surface of the cylindrical recess); and
- The claimed other of said first and second portions has a cylindrical outer portion fitting within said cylindrical recess

(Glauser '083, column 2, line 54-55, "diametral periphery of the holder," as shown in Fig. 4).

14. Regarding claim 96, the combination of Glauser '083 and Medvick '162, as applied to claim 95 above, further discloses the claimed other portion has a recess therein shaped to receive an annular sealing gasket (Glauser '083, column 2, line 52, "annular groove in which an o-ring is disposed," Fig. 3 #28, 32).

15. Regarding claim 103, the combination of Glauser '083 and Medvick '162, as applied to claim 91 above, further discloses the claimed first and second portion integrated together to form as a sealing member (Glauser '083, as shown in Fig. 3&4).

16. Regarding claim 104, the combination of Glauser '083 and Medvick '162, as applied to claim 103 above fully discloses the claimed invention, as discussed above regarding claim 95.

17. Claims 91-93, 95, 96, 103, and 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,944,319, Kohlman, hereafter, "Kohlman '319," in view of U.S. Patent 4,792,162, hereafter, "Medvick '162."

18. The limitation in claim 91, "a first portion and a second portion secured together prior to contact with a corresponding flange," has not been given patentable weight because it is a product-by-process limitation. Therefore, determination of patentability is based on the product itself, and does not depend on the method of production. Further, the process step recited does not imply any particular structure or impart distinctive structural characteristics to the final product. See MPEP 2113.

19. Regarding claim 91, Kohlman '319 discloses the claimed invention as follows:

- The claimed exhaust flange for securing to a complementary exhaust flange (column 2, line 41-46, "Both first pressure containing body 12 and second pressure containing body 14 have flanges 36 with apertures 38 in which are received threaded fasteners 40 with associated lock nuts 42, which serve as means for clamping first clamping face 16 and second clamping face 26 together in face to face relation," Fig. 1 #36);
- The claimed two-part exhaust flange having a first portion (column 2, line 32, "first clamping face," Fig. 1 #16) and a second portion (column 2, line 50, "sealing ring," Fig. 1 #44)

secured together (column 2, line 52-55, "Sealing ring 44 has a middle portion having a substantially constant inner diameter and outer diameter, the inner diameter being gradually enlarged proximate the truncated angular outer edges 46 so that truncated angular outer edges 46 engage truncated angular corners 22, prior to first clamping face 16 and second clamping face 26 engaging," Fig. 1);

- The claimed first and second exhaust pipes (column 2, lines 29-30, "first tubular pressure containing body and a second tubular pressure containing body," Fig. 1 #12, 14); and
- The claimed exhaust flange extending radially outwardly from a central opening for said first exhaust pipe, as shown in Fig. 1;

20. However, Kohlman '319 does not disclose the claimed at least one of said first or second portion is manufactured of sintered powdered metal.

21. Nevertheless, Medvick '162 teaches that it is known to use sintered powdered metal in the relevant art.

22. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to produce the flange of Kohlman '319 out of sintered powdered metal as taught by Medvick '162 because

such modification "offers significantly reduced manufacturing costs while providing a durable structure." Medvick '162, column 7, line 29-31.

23. Regarding claim 92, the combination of Kohlman '319 and Medvick '162, as applied to claim 91 above, further discloses the claimed element shaped to receive an annular sealing gasket (Kohlman '319, column 2, line 59-60, "circumferential seal grooves," Fig. 1 #50).

24. Regarding claim 93, the combination of Kohlman '319 and Medvick '162, as applied to claim 92 above, further discloses the claimed element is a protrusion from the exhaust flange, as shown in Kohlman '319, Fig. 1, where the portion of sealing ring 44 protruding radially outward between grooves 50 and abutting each o-ring 48 constitutes a protrusion shaped to receive an annular seal.

25. Regarding claim 95, the combination of Kohlman '319 and Medvick '162, as applied to claim 91 above, further discloses the claimed invention as follows:

- The claimed one of said first and second portions has a cylindrical recess in one face thereof, coaxial with said central opening (Kohlman '319, column 2, line 33-34, "first interior seal groove 20 serves to widen first aperture 18," Fig. 1); and

- The claimed other of said first and second portions has a cylindrical outer portion fitting within said cylindrical recess (Kohlman '319, column 2, line 50-52, "Sealing ring 44 has a middle portion having a substantially constant inner diameter and outer diameter," as shown in Fig. 1).

26. Regarding claim 96, the combination of Kohlman '319 and Medvick '162, as applied to claim 95 above, further discloses the claimed other portion has a recess therein shaped to receive an annular sealing gasket (Kohlman '319, column 2, line 59-60, "circumferential seal grooves," Fig. 1 #50).

27. Regarding claim 103, the combination of Kohlman '319 and Medvick '162, as applied to claim 91 above, further discloses the claimed first and second portion integrated together to form as a sealing member (Kohlman '319, as shown in Fig. 1&2).

28. Regarding claim 104, the combination of Kohlman '319 and Medvick '162, as applied to claim 103 above fully discloses the claimed invention, as discussed above regarding claim 95.

***Response to Arguments***

29. Applicant's arguments filed 9/22/09 have been fully considered but they are not persuasive.

30. Applicant's arguments directed to the sequence in which the parts are connected are not persuasuve because where the product is obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. MPEP 2113. See also the discussion in paragraphs 5 and 16, supra.

31. Applicant aruges in the third paragraph of page 9 that parts 22 and 25 of Glauser '083 are not secured together. This is not persuasive because the parts are secured via the threaded engagement of the flange and the complementary flange, as shown in Glauser '083, Fig. 3&4.

32. Applicant aruges in the third full paragraph of page 10 that Kohlman '319 does not disclose a two-piece flange. This is not persusasive because applicant has disclosed a two-piece flange comprising a flange (paragraph 57, Fig. 28 #204) and a gasket element (paragraph 57, Fig. 28 #200), and Kohlman '319 discloses a flange (Fig. 1 #36, as discussed above regarding claim 91) and a gasket element ("sealing ring," Fig. 1 #44, as discussed above regarding claim 91).

***Conclusion***

33. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Williams whose telephone number is (571)270-1155. The examiner can normally be reached on Mon-Thurs 9:30-7:00, Fri 9:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greg Binda/

Primary Examiner, Art Unit 3679

/R. W./
Examiner, Art Unit 3679
12/10/2009